IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11682 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 to 5 NO

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VIJAYAMALA ARUNKUMAR DHUMAL - Petitioner(s)

Versus

SUPERINTENDING ENGINEER & 1 - Respondent(s)

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Appearance :

MR MD RANA for Petitioner No(s).: 1 - 1.

MS REETA CHANDARANA AGP for Respondent No(s).: 1,2.

NOTICE SERVED BY DS for Respondent No(s).: 3.

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CORAM :HON'BLE MR.JUSTICE D.H.WAGHELA

Date : 18/07/2005

CAV JUDGMENT

1. In this petition under Article 226 of the Constitution, the original petitioner was employed as a driller under the Executive Engineer, Vadodara Machine Department (Roads & Buildings) under the State Government. According to the petition, he had served as a work-

charged employee from 1958 to 1973 and as a temporary employee from 1973 till 31.12.1990 when he retired. He was granted the benefit of pay-scale and his pay fixation was made in accordance with the G.C.S. Pay Rules, 1975 by the Office Order No.85 of 1976 by which initial pay of the government servants working on the work-charged establishments of the Executive Engineer, Workshop Planning Unit, PWD, Ahmedabad, who had opted for the revised pay-scale, were fixed. The arrears for the period from 1.1.1974 to 31.12.1975 were required to be credited in the G.P.F.accounts of the person concerned and the work-charged employees who had completed five years of continuous service on work-charged establishments as on 8.1.1976 were made eligible for G.P.F. accounts after G.P.F.accounts were opened. The petitioner had, by his letter dated 20.9.1983, applied for opening of a G.P.F.account and submitted the necessary particulars. When the original petitioner retired on attaining the age of superannuation on 31.12.1990, he was informed that he would not be entitled to pensionary benefits since the scheme of Employees Provident Fund was applicable in his case. It is contended in the petition that Contributory Provident Fund Scheme in the relevant department of the Government was discontinued and the authorities were required to open a G.P.F. account of the original petitioner. That having not been done, the respondents were required to be directed to grant to the petitioner pensionary benefits with all arrears and gratuity subject to adjustment of the Contributory Provident Fund, according to the prayer.

2. By filing an affidavit of the Executive Engineer working in the department of the respondent, it is contended for the respondent that as a driller in the workshop of the respondent, the original petitioner

was made a member of and had subscribed to the Employees Provident Fund Scheme and he had never subscribed to or opted for Contributory Provident Fund Scheme. That he was paid all the terminal benefits on his retirement and the total payment out of his Employees Provident Fund account was also made. It is clarified that, despite his application dated 20.09.1983, he continued as a member of the Employees Provident Fund Scheme till his retirement since he was not exempted from that Scheme.

3. The Government Resolution dated 8.1.1976, on which the petitioner has relied, stipulated that the work-charged employees under PWD (excluding Panchayats and Ports) who had completed five years of continuous service on work-charged establishments on the date of issue of the order should be treated at par with the persons on temporary establishments under PWD in the matters of pensionary benefits and GPF Scheme; and the Contributory Provident Fund Scheme, which was introduced under the Government Resolution dated 7.9.1973 was discontinued.

4. Against the backdrop of above facts and contentions, it was clear that the petition was thoroughly misconceived and the submissions were absolutely misleading. Firstly, at the time of granting the benefits of revised pay-scale and the orders pursuant thereto, the original petitioner had admittedly neither completed five years of continuous service on work-charged establishment nor had he been a member of the Contributory Provident Fund Scheme. Therefore, there was no question of opening his GPF account and granting of pensionary benefits at any stage even as he continued to be governed by and took benefit of Employees Provident Fund Scheme. After pocketing the

benefits of the GPF Scheme in 1991, the present petition appears to have been filed in the year 1994, apparently with a view to take a chance for better or higher benefits.

5. The original petitioner has passed away during the pendency of the petition and his heirs have been joined in the year 1999. An application made for that purpose, being Civil Application No.2466 of 1999, was allowed on 5.7.1999. Necessary amendment in the cause title of the petition appears to have been carried out on 15.7.1999. However, an application, being Civil Application No.2292 of 2005, in the name of the widow was moved with a prayer to condone the delay of 2152 days in presenting the application and to permit the applicant to join as legal heir and representative of the deceased. In both the applications, the certificate of death of Arunkumar is annexed. The latter application is disposed with the order dated 28.3.2005 (Coram: Dr.J.N.Bhatt, J.) as under:

> "Rule. Service of Rule is waived by learned AGP Mr.Bhate.
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> After having taken into consideration, the facts and circumstances of the case and the ground stated in the application for unduly long delay and the Benign purpose of processual law vis-a-vis substantive law and the age, education, place of residence of the petitioners widow ends of justice will be satisfied, if delay is condoned as prayed for and to then consider the merits as to whether widow will be entitled to any pensionary benefits after the death of the husband or not. It is in this context, the application to bring the heirs on record is granted. Rule made absolute with no order as to costs.
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> In view of the peculiar circumstances and the factum that widow is aged about 65 years and her claim is for family pension, office is directed to notify this matter in the last week of April beginning from 25th April, 2005 for further consideration."

6. Even after the above double orders joining heirs of the original petitioner, the learned counsel had preferred to ask for adjournments on the grounds of awaited instructions and intention of submitting draft amendment so as to claim and justify payment of family pension to the heirs. This narration of procedural history highlights how public time of the Court is taken and wasted while arrears are mounting to the detriment of public confidence in the judicial system and litigants with genuine grievances are made to wait for their turn.

7. In the aforesaid facts and circumstances, the petition is rejected for having no legal basis and Rule is discharged. There is, however, no order as to costs only because the aged widow and the heirs of the original petitioner may be ignorant about the public wrong committed in their name.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)